

# SENATE BILL REPORT

## HB 1039

---

---

As of March 3, 2011

**Title:** An act relating to the subpoena authority of the department of financial institutions.

**Brief Description:** Addressing the subpoena authority of the department of financial institutions.

**Sponsors:** Representatives Bailey and Kirby; by request of Department of Financial Institutions.

**Brief History:** Passed House: 2/07/11, 92-0.

**Committee Activity:** Financial Institutions, Housing & Insurance: 3/08/11.

---

### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

**Staff:** Alison Mendiola (786-7483)

**Background:** In 2007 the Washington State Supreme Court (Court) held that a search of personal banking records by the Department of Financial Institutions (Department) without a judicially issued warrant or subpoena violated Article I, section 7 of the Washington Constitution (*State v. Miles*, 160 Wn. 2d 236). Article I, section 7 states that "[n]o person shall be disturbed in his private affairs . . . without authority of law." The Court invalidated the Department's statute to the extent it authorized the Department to issue subpoenas to third parties for otherwise private information not related to the regulated business activities.

In 2010 legislation was enacted (SHB 2789) establishing a process for the Department of Labor & Industries, the Employment Security Department, and the Department of Revenue to seek judicial approval of a subpoena in advance of its issuance.

**Summary of Bill:** The Legislature intends to provide a process for the Department to apply for court approval of an agency investigative subpoena where the agency seeks approval, or where court approval is required by law or Article I, section 7 of the state Constitution.

The Director, or authorized assistants, of the Department may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that an order is sought pursuant to the authority granted; specify documents, records, evidence, or testimony; and include a declaration under oath that an investigation is being conducted for a lawfully authorized purpose and that the documents, records, evidence, or testimony are reasonably related to an investigation within the Department's authority. Where the

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

application is made to the satisfaction of the court, the court must issue an order approving the subpoena. No prior notice to any person is required.

This authority is granted under the following regulatory programs of the Department: franchise investment protection, business opportunities, mortgage brokers, securities, money transmitters, commodity transactions, consumer loan companies, and check cashers and sellers.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.